

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Telecommunications Act 1997

Submarine Cable (Southern Sydney Protection Zone) Declaration Variation 2025 (No. 1)

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Submarine Cable (Southern Sydney Protection Zone) Declaration Variation 2025 (No. 1)* (**the instrument**) under subclause 23(1) of Schedule 3A to the *Telecommunications Act 1997* (**the Act**).

Subclause 23(1) of Schedule 3A to the Act provides that the ACMA may, by legislative instrument, vary or revoke a declaration of a protection zone. Before the ACMA varies or revokes a declaration of a protection zone, the ACMA must comply with Subdivision B of Division 3, Part 2 of Schedule 3A to the Act. The ACMA has met each of the statutory preconditions in making the instrument.

Relevantly, the ACMA developed a proposal to vary the *Submarine Cable (Southern Sydney Protection Zone) Declaration 2007* (**the Declaration**) under clause 30 of Schedule 3A to the Act. The ACMA subsequently published the proposal and a summary of the proposal, and consulted on these materials consistent with the requirements under clauses 32, 32A and 33 of Schedule 3A to the Act.

In deciding to vary the Declaration, the ACMA has had regard to the required matters specified under clause 34 of Schedule 3A to the Act. The ACMA made the decision to vary the Declaration on 23 October 2025, in accordance with the timeframe provided in clause 35 of Schedule 3A to the Act.

Purpose and operation of the instrument

The instrument amends the Declaration. The ACMA made the Declaration in 2007 to establish the Southern Sydney Protection Zone over the Southern Cross Cable and the Australia Japan Cable, located in waters off the coast of Sydney, New South Wales (**NSW**). The Declaration specifies the area of the Southern Sydney Protection Zone, the nominal location of the Southern Cross Cable and the Australia Japan Cable and the prohibited and restricted activities within the Southern Sydney Protection Zone.

The ACMA developed a proposal to vary the Declaration based on a request from Perch Infrastructure Pty Ltd (**Perch Infrastructure**), a licensed telecommunications carrier under the Act. Perch Infrastructure made a request in accordance with paragraph 24(b) of Schedule 3A to the Act, that the ACMA vary the Declaration to enable the extension of the Southern Sydney Protection Zone over its proposed international submarine cable, Tabua (**the Tabua Cable**). The Tabua Cable will connect Australia to Fiji and the United States of America, with a landing point at Maroubra, NSW outside of the boundaries of the Southern Sydney Protection Zone established by the Declaration.

Part 2 of Schedule 3A to the Act enables the ACMA to declare, vary and revoke protection zones in relation to cables of national significance. The ACMA is, in accordance with clause 18 of Schedule 3A to the Act, satisfied that the Tabua Cable is, or will be, a cable of national significance.

Submarine cables are critical communications infrastructure that carry the vast majority of Australia's international data traffic. The primary purpose of the Declaration is to provide protections for submarine cables connecting to southern Sydney, by deterring actions that are capable of damaging them. The Declaration regulates the human activities most likely to cause physical damage to submarine cables, including certain kinds of fishing, anchoring and dredging. By imposing prohibitions and restrictions on these kinds of activities, the Declaration is intended to reduce the

likelihood of accidental cable breaks which can result in substantial costs (through network disruptions and cable repairs) to carriers, businesses and consumers.

The expansion of the Southern Sydney Protection Zone over the nominal location of the Tabua Cable will therefore support the efficiency and reliability of a critical component of Australia's communications infrastructure.

The expanded protection zone will have the added benefit of protecting any other submarine cables that may be installed in the relevant area in the future, including by carriers other than Perch Infrastructure. Accommodating the installation of additional resilient, high-capacity submarine cables systems connecting to Australia promotes the long-term interests of end-users of carriage services and the efficiency and international competitiveness of the Australian telecommunications industry, consistent with the objects of the Act.

To make changes to the area of the Southern Sydney Protection Zone, the instrument specifies the nominal location of the Tabua Cable. In accordance with subclauses 9(4) and (5) of Schedule 3A to the Act, the varied area of the protection zone consists of the area between the nominal locations of the Australia Japan Cable and the Tabua Cable, and the area no more than one nautical mile (1852 metres) from the outside edges of these two cables. In effect, the Southern Sydney Protection Zone is widened by up to 4.1km in a southerly direction only, continues to commence at the low water mark and finish at a point corresponding to an approximate water depth of 2,000 metres. Each of the submarine cables installed within the Southern Sydney Protection Zone remains within the zone boundaries following these changes.

Each of the prohibitions and restrictions on activities within the Southern Sydney Protection Zone, as specified in sections 8 and 9 of the Declaration, will continue to apply across the area of the zone as varied. The ACMA has introduced provisions to allow the use of fish aggregating devices deployed seasonally by the NSW Department of Primary Industries and Regional Development, at specified locations within the extended area of the zone.

The instrument also makes machinery amendments to the Declaration, to remove a redundant definition for 'beach safety meshing net' based on a now repealed legislative instrument and to update the formatting of all references to geographic coordinates based on the Geocentric Datum of Australia 2020 (**GDA2020**). The Intergovernmental Committee on Surveying and Mapping (**the ICSM**) recommends the use of GDA2020 as the best practice system for coordinates in Australia. Information about GDA2020 can be obtained, free of charge, from the ICSM at www.icsm.gov.au.

A provision-by-provision description of the instrument is set out in the notes at **Attachment A**.

The instrument is a disallowable legislative instrument for the purposes of Part 2 of Chapter 3 of the *Legislation Act 2003* (the **LA**).

Documents incorporated by reference

The instrument incorporates or refers to the Act and the *Fisheries Management Act 1994* (NSW). The Act is available free of charge on the Federal Register of Legislation (<http://www.legislation.gov.au>) and the *Fisheries Management Act 1994* (NSW) is available free of charge on the NSW legislation website (<https://legislation.nsw.gov.au/>).

The two Acts referred to above are incorporated as in force from time to time, in accordance with section 10 of the *Acts Interpretation Act 1901* (Cth), subsection 13(1) of the LA and section 589 of the Act.

Consultation

Before making the instrument, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

The ACMA was also satisfied that public consultation had been undertaken in accordance with the requirements of clauses 32 and 32A of Schedule 3A to the Act, and that consultation with the Environment Secretary had been undertaken in accordance with clause 33 of Schedule 3A to the Act.

The ACMA conducted a public consultation process during the period 5 May 2025 to 16 June 2025. The ACMA invited public submissions on the proposal, which was published on the ACMA's website. Interested parties could access a draft of the instrument and a detailed discussion paper.

The ACMA also prepared a summary of the proposal, which was published in the Commonwealth of Australia Gazette on 6 May 2025 and in 'The Australian' newspaper on 7 May 2025. The proposal summary included details of how interested parties could access the proposal on the ACMA's website or contact the ACMA to seek further information about the proposal.

A range of parties across Commonwealth and state governments, local government and the telecommunications industry, and representative bodies for fishing, diving, shipping and Aboriginal cultural heritage interests were directly notified of the public consultation and invited to comment.

The ACMA received 24 submissions in relation to the proposal to make the instrument. All non-confidential submissions were published on the ACMA website as part of the consultation process.

The ACMA considered all feedback carefully.

A submission by the Department of Climate Change, Energy, the Environment and Water (DCCEEW) identified that the extended area of the Southern Sydney Protection Zone would encompass a critical habitat for the grey nurse shark species. All submarine cable installations within the protection zone will be subject to ACMA permitting decisions under Division 2, Part 3 of Schedule 3A to the Act. Neither the variation of the Declaration nor the permitting of the installation submarine cables by the ACMA will derogate from the powers and responsibilities of DCCEEW in administering the environmental approvals process under the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act). The ACMA considers that in most cases, the powers under the EPBC Act will be the appropriate mechanism to manage any potential impacts of submarine cable installation on the grey nurse shark and will continue to consult with DCCEEW on all installation permit applications to manage such impacts on a case-by-case basis.

Six submissions were made by stakeholders associated with the NSW commercial fishing industry. These submissions expressed concern about the instrument excluding certain fishing methods from existing fishing grounds overlapping the extended area of the Southern Sydney Protection Zone. The ACMA acknowledges that the variation represents an extension of the existing prohibitions and restrictions on activities over a submarine cable of national significance which may affect the operations of some commercial fishers. As with the Declaration, the instrument ensures only those fishing activities which represent a serious risk of damaging a submarine cable are limited, in recognition of the need to minimise the impact of the Southern Sydney Protection Zone on other users of the marine area.

Statement of compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the LA applies to cause a statement of compatibility with human rights to be prepared in respect of that legislative instrument.

The statement of compatibility with human rights at **Attachment B** has been prepared to meet that requirement.

Notes to the *Submarine Cable (Southern Sydney Protection Zone) Declaration Variation 2025 (No. 1)*

Section 1 Name

This section provides for the instrument to be cited as the *Submarine Cable (Southern Sydney Protection Zone) Declaration Variation 2025 (No. 1)* (**the instrument**).

Section 2 Commencement

This section provides for the instrument to commence at the start of the day after the day it is registered on the Federal Register of Legislation.

The Federal Register of Legislation may be accessed free of charge at www.legislation.gov.au.

Section 3 Authority

This section identifies the provision that authorises the making of the instrument, namely subclause 23(1) of Schedule 3A to the *Telecommunications Act 1997* (**the Act**).

Section 4 Variations

This section provides that the legislative instrument specified in Schedule 1, being the *Submarine Cable (Southern Sydney Protection Zone) Declaration 2007* (F2007L02217) (**the Declaration**), is varied as described by the applicable items in that Schedule.

Schedule 1–Variations

Item 1 Section 3 (definition of *beach safety meshing net*)

This item repeals the definition of ‘beach safety meshing net’ in section 3 of the Declaration. The term was previously defined by reference to clause 42 of the *Fisheries Management (General) Regulation 2002* (NSW) as in force at the commencement of the Declaration. The regulation is no longer in force and its replacement does not include a definition for the term ‘beach safety meshing net’. The instrument will now rely on the ordinary meaning of the term ‘beach safety meshing net’.

Item 2 Section 3

This item inserts two new definitions into the instrument.

Item 3 After section 3

This item inserts a new section 3A into the instrument. Section 3A provides that in the instrument, unless the contrary intention appears:

- a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- a reference to any other kind of instrument is a reference to that other instrument as existing from time to time.

Item 4 Section 6

This item repeals and substitutes section 6 to describes the varied area of the Southern Sydney Protection Zone.

The Southern Sydney Protection Zone consists of the area between the nominal location of the Australia Japan Cable and the Tabua Cable, and the area no more than one nautical mile (1852 metres) from the outside edge of the points on the surface of the sea above the nominal location of the two cables. The Southern Sydney Protection Zone commences at the low-water mark of the coastline of NSW and finishes at a point corresponding to a water depth of 2000 metres. In accordance with subclause 9(4) of Schedule 3A to the Act, the Southern Sydney Protection Zone includes the waters, sea and subsoil beneath that area.

A note to section 6 is also varied, to specify that all geographic coordinates in the Declaration are provided in the Geocentric Datum of Australia 2020 (**GDA2020**). Further information about GDA2020 can be obtained, free of charge, from the Intergovernmental Committee on Surveying and Mapping at www.icsm.gov.au.

Item 5 Section 7 (Table 3)

This item repeals Table 3 in the Declaration which specifies the nominal location of the Australia Japan Cable according to a list of geographical coordinates for the cable route in Australian waters.

The item replaces Table 3 with a list of geographic coordinates that are provided in GDA2020. There is no substantive change to the nominal location of the Australia Japan Cable.

Item 6 Subsection 7(2)

This item repeals subsection 7(2) of the Declaration which references the nominal location for the Southern Cross Cable for the purposes of clause 8 of Schedule 3A to the Act. This item substitutes a new subsection 7(2) with a reference to the nominal location for the Tabua Cable, in accordance with clause 8 of Schedule 3A to the Act.

This change enables the use of the nominal location of the Tabua Cable for the purposes of determining the area of the Southern Sydney Protection Zone, under subclauses 9(4)-(6) of Schedule 3A to the Act.

As a submarine cable installed within the boundaries of the Southern Sydney Protection Zone, the Southern Cross Cable continues to be subject to the protections afforded by the prohibitions and restrictions on activities under the Declaration.

Item 7 Section 7 (Table 4)

This item repeals and substitutes a new Table 4 in the Declaration. Table 4 specifies the nominal location for the Southern Cross Cable according to a list of geographical coordinates for the cable route in Australian waters. The substituted Table lists geographic coordinates for the route of the Tabua Cable in Australian waters.

Item 8 Section 8

This item repeals and substitutes section 8 in the Declaration. Section 8 sets out prohibited activities in the Southern Sydney Protection Zone and includes a new exemption to one of the prohibited activities listed in Table 5. Subsection 8(2) provides that an activity described in item 1 of table 5 is not a prohibited activity for the purposes of the Declaration if the following criteria are met:

- the activity involves the installation, management or removal of a fish aggregating device;
- the installation, management or removal takes place within a 100 metre radius of one of the two points specified in table 5A; and
- the activity is contracted or conducted by, or on behalf of, the Department of Primary Industries and Regional Development.

This item has been incorporated at the request of the New South Wales Department of Primary Industries and Regional Development. It will enable the ongoing deployment of two long-standing fish aggregating devices within the extended area of the Southern Sydney Protection Zone, approximately 4 nautical miles off the coast of Maroubra Beach.

A fish aggregating device is defined in section 3 (see item 2) as a structure moored to the seabed with the primary function of attracting fish for capture.

Item 9 Section 9 (Example 1 under Table 6)

This item omits the reference to “(within the meaning given by clause 42 of the *Fisheries Management (General) Regulation 2002* (NSW) as in force at the commencement of this Declaration).” The *Fisheries Management (General) Regulation 2002* (NSW) is no longer in force and its replacement does not provide a definition for the relevant term ‘beach safety meshing net’.

The term ‘beach safety meshing net’ is still used in Example 1 to section 9 and includes nets anchored to the seabed for the purposes of Item 1 of Table 6 (Restricted activities in the Southern Sydney Protection Zone). Beach safety meshing nets also include demersal gillnets, or nets deployed by the NSW Department of Primary Industries and Regional Development for shark management purposes.

Item 10 Section 9 (Table 7)

This item repeals and substitutes Table 7 in the Declaration. Table 7 specifies geographic coordinates for an area in the Southern Sydney Protection Zone for the purposes of the exception to the restriction in paragraph (b) of item 17 in Table 6.

The substituted Table 7 contains geographic coordinates that are provided in GDA2020. There is no substantive change to the area in the Southern Sydney Protection Zone to which the exception to the restriction in paragraph (b) of item 17 in Table 6 applies.

Statement of compatibility with human rights

Prepared by the Australian Communications and Media Authority (ACMA) under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the *Legislation Act 2003* applies to cause a statement of compatibility with human rights to be prepared in respect of that legislative instrument.

The statement of compatibility set out below has been prepared to meet that requirement.

Overview of the instrument

The *Submarine Cable (Southern Sydney Protection Zone) Declaration Variation 2025 (No. 1)* (**the instrument**) varies the *Submarine Cable (Southern Sydney Protection Zone) Declaration 2007* (**the Declaration**). The Declaration specifies the area of the Southern Sydney Protection Zone for two submarine cables of national significance in the waters off Sydney, NSW. Within the area of the Southern Sydney Protection Zone, certain activities that are capable of damaging submarine cables are prohibited or restricted.

The instrument varies the Declaration to broaden the area of the Southern Sydney Protection Zone, based on the nominal location of a new submarine cable of national significance: the Tabua cable. The changes are also based on the limitations on the area of a protection zone declared by the ACMA, as set out in subclauses 9(4)-(6) of Schedule 3A to the Act. The southernmost boundary of the Southern Sydney Protection Zone is shifted up to 4.1km in a southerly direction. The existing prohibitions and restrictions on activities within the Southern Sydney Protection Zone are carried over to the extended area, with one minor change to allow the ongoing use of fish aggregating devices by the NSW Department of Primary Industries and Regional Development at specified locations within this area.

These changes will enable the protection of the Tabua cable from physical damage due to human activities such as trawl-fishing, the anchoring of heavy vessels and dredging, with the added benefit of protecting any other submarine cables installed in the relevant area in the future.

The instrument also makes machinery amendments to the Declaration, to remove a reference to a now repealed item of NSW legislation and to update references to geographic coordinates to the Geocentric Datum of Australia 2020 (**GDA2020**).

Human rights implications

The ACMA has assessed whether the instrument is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instrument may engage the following rights or freedoms:

- The right to work in Article 6 of the *International Covenant on Economic, Social and Cultural Rights*, which states:
 1. *The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*
- The right to freedom of expression in Article 19(2) of the *International Covenant on Civil and Political Rights (ICCPR)*, which states:
 2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

Right to work

The ACMA considers the instrument could be considered to limit the right to work as the instrument prohibits certain activities from being undertaken within a protection zone. The prohibitions are, however, limited to only a small subset of activities which are likely to result in a physical connection between a ship or other object and the seabed that is capable of damaging a submarine cable. The instrument and the Declaration have been drafted to prohibit activities that constitute a serious threat of damage to a submarine cable.

Submarine cables are critical communications infrastructure that carry the vast majority of Australia's international data traffic. Damage to submarine cables can lead to major disruptions across internet services, email, radio and television broadcasting, and banking. Worldwide, most instances of reported damage affecting submarine cables are the result of accidental human interactions, in particular fishing and anchoring.

While the instrument and Declaration engages the right to work in a way that could be restrictive or exclusionary, the ACMA considers the measures are justified or proportionate to ensure the protection of submarine cables, including cables of national significance that have been laid within the protection zone and which are themselves necessary adjuncts to the conduct of, and participation in, work of multiple kinds.

Right to freedom of expression

The ACMA considers the instrument positively engages the right to freedom of expression, in so far as that right includes the rights of persons to seek, receive and impart information.

There is continuing demand for submarine cables (including new and further cables) connecting to Australia, to support the population's growing appetite for data to support communications, streaming, online applications, cloud services and emerging technologies such as generative artificial intelligence and spatial computing.

The primary purpose of the extended protection zone is to provide security and reliability of a critical component of Australia's national information infrastructure by deterring actions that may damage submarine cables of national significance. The extended protection zone will have the added benefit of protecting cables that are not of national significance that are also located within the zone.

Conclusion

The instrument is compatible with human rights including the right to work and the right to freedom of expression. The right to the freedom of expression is positively engaged by providing protections and safeguards to critical communications infrastructure. To the extent the instrument may limit human rights (for example, the right to work), those limitations are reasonable, necessary and proportionate.